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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/826,212	04/05/2001	Ying-Fei Wei	1488.1280006	3523

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EXAMINER

O HARA, EILEEN B

ART UNIT

PAPER NUMBER

1646

DATE MAILED: 06/10/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Applicati n N .

09/826,212

Applicant(s)

WEI ET AL.

Examiner

Eileen B. O'Hara

Art Unit

1646

-- The MAILING DATE of this communication appears n the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 23-116 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 23-116 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
    - I. Claims 23-87 and 101-116, drawn to the polypeptide of SEQ ID NO: 2 or polypeptide encoded by the cDNA contained in ATCC Deposit No. 97798, classified in class 530, subclass 350.
    - II. Claims 88-100, drawn to in so far as they are drawn to a polypeptide comprising an amino acid sequence consisting of amino acids 42-50 of SEQ ID NO: 2, classified in class 530, subclass 350.
    - III. Claims 88 and 90-100, in so far as they are drawn to in so far as they are drawn to a polypeptide comprising an amino acid sequence consisting of amino acids 53-59 of SEQ ID NO: 2, classified in class 530, subclass 350.
    - IV. Claims 88 and 91-100, in so far as they are drawn to in so far as they are drawn to a polypeptide comprising an amino acid sequence consisting of amino acids 65-76 of SEQ ID NO: 2, classified in class 530, subclass 350.
    - V. Claims 88 and 92-100, in so far as they are drawn to in so far as they are drawn to a polypeptide comprising an amino acid sequence consisting of amino acids 84-96 of SEQ ID NO: 2, classified in class 530, subclass 350.
    - VI. Claims 88 and 93-100, in so far as they are drawn to in so far as they are drawn to a polypeptide comprising an amino acid sequence consisting of amino acids 100-110 of SEQ ID NO: 2, classified in class 530, subclass 350.
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VII. Claims 88 and 94-100, in so far as they are drawn to in so far as they are drawn to a polypeptide comprising an amino acid sequence consisting of amino acids 116-122 of SEQ ID NO: 2, classified in class 530, subclass 350.

The inventions are distinct, each from the other because of the following reasons:

Although the classification for these various polypeptides are overlapping and the polypeptides of Groups II-VII comprise small fragments of SEQ ID NO: 2 of the invention of Group I, each of these are patently distinct products. Due to the use of "comprising" language, the polypeptides comprising the small fragments of Groups II-VII can be completely different proteins having different amino acid sequences and activities from that of Group I or each other. Further, the search for more than one product would be burdensome, because each group requires separate sequence searches.

2. Because these inventions are distinct for the reasons given above and the search required for one group is not required for any other group, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

3. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eileen B. O'Hara, whose telephone number is (703) 308-3312. The examiner can normally be reached on Monday through Friday from 9:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yvonne Eyler can be reached at (703) 308-6564.

Official papers Before Final filed by RightFax should be directed to (703) 872-9306.

Official papers After Final filed by RightFax should be directed to (703) 872-9307.

Official papers filed by fax should be directed to (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Eileen B. O'Hara, Ph.D.

Patent Examiner



**LORRAINE SPECTOR**  
**PRIMARY EXAMINER**